

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

- - - - -X
UNITED STATES OF AMERICA, :
 :
Plaintiff, : Criminal No. 4:15-103
 :
vs. :
 :
JESSE R. BENTON and : TRANSCRIPT OF TRIAL
DIMITRIOS N. KESARI, : VOLUME VIII
 :
Defendants. :
- - - - -X

Second Floor Courtroom
United States Courthouse
123 East Walnut Street
Des Moines, Iowa 50309
Thursday, October 22, 2015
10:20 a.m.

BEFORE: THE HONORABLE JOHN A. JARVEY, Chief Judge, and a Jury.

Terri L. Martin, CSR, RPR, CRR
United States Court Reporter
Room 189, U.S. Courthouse
123 East Walnut Street
Des Moines, Iowa 50309

APPEARANCES:

For the Plaintiff:

JONATHAN I. KRAVIS, ESQ.
U.S. Department of Justice
Criminal Division
10th and Constitution Avenue NW
John C. Keeney Building
Washington, D.C. 20530

RICHARD CHRISTIAN PILGER, ESQ.
U.S. Department of Justice
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Washington, D.C. 20005

For Defendant Benton:

ROSCOE C. HOWARD, JR., ESQ.
MEENA T. SINFELT, ESQ.
Barnes & Thornburg
1717 Pennsylvania Avenue NW
Suite 500
Washington, D.C. 20006

For Defendant Kesari:

JESSE RYAN BINNALL, ESQ.
Harvey & Binnall
717 King Street
Suite 300
Alexandria, Virginia 22314

1 P R O C E E D I N G S

2 (In open court, out of the presence of the jury.)

3 THE COURT: Please be seated.

4 Big surprise, another question. Wow.

5 So I attempted to answer it using their words and
6 rephrasing, that was the intent. What do you think?

7 MR. KRAVIS: The government has no objection to the
8 court's drafted answer. The government proposes adding one
9 additional sentence to the end of the answer. The sentence is:
10 "In determining whether the defendants acted willfully, you may
11 consider evidence of the defendant's words, acts or omissions
12 along with all of the other evidence."

13 That's language that appears in the court's jury
14 instruction on intent or knowledge. It did not appear in the
15 instruction on willful, but I believe it's equally applicable to
16 that concept. And the reason the government is proposing this
17 sentence is just as a means to sort of draw to the attention of
18 the jury the idea that they may in answering the question of
19 willfulness find it helpful to sort of go back to the evidence
20 that they saw and heard during the course of the trial as
21 opposed to continuing to formulate abstract questions. That is
22 sort of drawing their attention to the evidence that they may
23 use to consider how they would decide the willfulness, the
24 willfulness element in light of the answers that the court has
25 given to their questions on the law.

1 THE COURT: Mr. Binnall.

2 MR. BINNALL: Thank you, Your Honor.

3 We do not object to the court's answer. We do object
4 to the extra sentence added by the government. It's already in
5 a particular jury instruction and we do not think that it is
6 fully applicable. And, of course, we haven't had the
7 opportunity to argue to the jury about what this would actually
8 mean, and so it's a little -- it changes the terrain, so to
9 speak, too much for what they should consider. We don't believe
10 it's fully accurate. But the court's response we have no
11 objection to.

12 THE COURT: Mr. Howard.

13 MR. HOWARD: Your Honor, actually we think the court's
14 response is fine. And I understand Mr. Kravis's position; but
15 the problem I have with it is that it's not responsive to their
16 question, and they seem to be deliberating and understanding
17 that there's stuff on willfulness. But they asked a question
18 and I thought your answer was exactly what they're looking for.
19 I think adding something might cause more questions in the
20 deliberation that is going on, so we would object to the
21 government's suggestion of adding that. We would have no
22 objection to what you have proposed.

23 THE COURT: I'm going to add the government's
24 language. I think it would direct them back to the evidence,
25 which is where they need to be.

1 (Recess at 10:25 a.m., until 11:24 a.m.)

2 (In open court, out of the presence of the jury.)

3 THE COURT: Please be seated.

4 So you received the note from the jury. What's the
5 government's position?

6 MR. KRAVIS: The government requests an Allen charge.

7 THE COURT: Mr. Binnall?

8 MR. BINNALL: We oppose an Allen charge, Your Honor.
9 We think at this point they have taken things very seriously.
10 It's very clear from their notes back and forth that they've
11 taken these issues very seriously, and at this point I think
12 it's best to just go ahead and take the verdicts on what they
13 have and take mistrials on the other.

14 THE COURT: Mr. Howard?

15 MR. HOWARD: I would echo Mr. Binnall's comments. We
16 would ask for return of the three verdicts that are there. We
17 understand we're only on one -- and obviously we don't know the
18 counts -- and then Mr. Binnall is on the others.

19 THE COURT: So the jury told us yesterday, in essence,
20 they were deadlocked on three of the six counts. I've told them
21 to continue deliberating. It was obvious from the number and
22 the subject matter of the questions that they were trying very
23 hard, and they've now had two nights to sleep on this and the
24 tenor of the note says -- describes the seriousness and the
25 hopelessness of arriving at a verdict on the remaining three

1 counts.

2 Under those circumstances, I declare a mistrial on the
3 three counts and will accept their verdict on the other three.

4 Ms. Clerk, go get the jury. Tell them to bring the
5 filled in verdict form with them.

6 (Pause.)

7 Did we see from earlier notes -- yes, Mr. Dark is the
8 foreperson.

9 (Pause.)

10 THE COURT: If anyone wishes to have the jury polled,
11 I'm expecting you to stand up and request it.

12 MR. HOWARD: Yes, sir.

13 MR. BINNALL: Yes, Your Honor.

14 (Pause.)

15 THE COURT: Before the jurors come in, they just asked
16 my clerk if they're to leave the form blank on the counts to
17 which they can't reach a verdict in.

18 (Pause.)

19 (In open court, in the presence of the jury.)

20 THE COURT: Please be seated.

21 Mr. Dark, you are the foreperson of the jury?

22 FOREPERSON DARK: Yes, sir.

23 THE COURT: As I understand it, the jury has reached
24 unanimous verdicts on three of the six counts; is that correct?

25 FOREPERSON DARK: That's correct.

1 THE COURT: Unanimous meaning everybody agrees to the
2 decision on those three counts?

3 FOREPERSON DARK: Correct.

4 THE COURT: And that the jury is hung or deadlocked on
5 the other three which were not resolved, correct?

6 FOREPERSON DARK: That's correct.

7 THE COURT: Ms. Clerk, get the verdict form from the
8 foreperson.

9 THE COURT: Count 1, conspiracy, the juror is hung.
10 Count 2, causing false records. With regard to the
11 crime of causing false records, as charged in Count 2 of the
12 indictment, we, the jury, find the defendant, Dimitrios N.
13 Kesari, guilty.

14 Count 3, the jury is hung.

15 Count 4, the jury is hung.

16 Count 5, false statements to law enforcement. With
17 regard to the crime of false statements to law enforcement, as
18 charged in Count 5 of the indictment, we, the jury, find the
19 defendant, Jesse R. Benton, not guilty.

20 Count 6, obstruction of justice. With regard to the
21 crime of obstruction of justice, as charged in Count 4 of the
22 indictment -- should have been 6 of the indictment, we find the
23 defendant Dimitrios N. Kesari not guilty.

24 It's signed by the foreperson and by the other nine
25 jurors of the jury.

1 The clerk of court shall publish the verdict and make
2 it available for public inspection filing to make it public.

3 Members of the jury, on behalf of the court for the
4 Southern District of Iowa, I wish to thank you for your service
5 in this case. I'm going to meet with you back in the jury room
6 for just a few minutes afterwards just to visit with you about
7 it and thank you more personally, but I wanted to thank you
8 publicly.

9 When our country's independence was won, our
10 forefathers included within the United States Constitution the
11 Sixth Amendment, part of the Bill of Rights which guarantees
12 that a case like this would not be resolved by a king or a
13 president or a judge or a doctor, but by people selected at
14 random from the community.

15 And so through your service here this last week or so,
16 you've lived out our United States Constitution and perhaps our
17 most tangible form of self government, and for that we thank
18 you.

19 You're excused at this time. You can again take your
20 notes with you. I'm going to meet with you back in the jury
21 room and we'll just have a little more private session at that
22 time, and I'll be there in just one moment. There are a couple
23 of other matters I need to take care of.

24 Thanks. You're excused.

25 (Jury excused.)

1 (In open court, out of the presence of the jury.)

2 THE COURT: Please be seated.

3 Mr. Benton, you're free to go. The conditions of
4 release previously imposed are now exonerated by reason of your
5 acquittal.

6 What's the government's position concerning bond for
7 Mr. Kesari?

8 MR. PILGER: PR bond is fine, Your Honor, with
9 surrender of the passport continuing. We ask that he surrender
10 his passport to pretrial services.

11 THE COURT: Do you have a passport?

12 DEFENDANT KESARI: I've already surrendered it.

13 THE COURT: You're released on the same terms and
14 conditions as previously imposed.

15 So we'll be looking for the government in the next ten
16 days to tell us what their plans are for the future here,
17 whether retrial needs reindictment on the others, whatever.

18 MR. PILGER: Very well, Your Honor.

19 THE COURT: Ten days?

20 MR. PILGER: Yes.

21 THE COURT: Thank you.

22 We're in recess.

23 (Proceedings concluded at 11:37 a.m.)

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1 C E R T I F I C A T E

2 I, the undersigned, a Certified Shorthand Reporter of
3 the State of Iowa, do hereby certify that I acted as the
4 official court reporter at the hearing in the above-entitled
5 matter at the time and place indicated.

6 That I took in shorthand all of the proceedings had at
7 the said time and place and that said shorthand notes were
8 reduced to computer transcription under my direction and
9 supervision, and that the foregoing computer transcription pages
10 are a full and complete transcript of the shorthand notes so
11 taken.

12 Dated at Des Moines, Iowa, this 22nd day of October,
13 2015.

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17 /s/ Terri L. Martin
18 CERTIFIED SHORTHAND REPORTER

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